

Bryan W. Shaw, Ph.D., *Chairman*
Buddy Garcia, *Commissioner*
Carlos Rubinstein, *Commissioner*
Mark R. Vickery, P.G., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

April 20, 2010

TO: Persons on the attached mailing list.

RE: City of Fair Oaks Ranch
TPDES Permit No. WQ0011867001

Decision of the Executive Director.

The executive director has made a decision that the above-referenced permit application meets the requirements of applicable law. **This decision does not authorize construction or operation of any proposed facilities.** Unless a timely request for contested case hearing or reconsideration is received (see below), the TCEQ executive director will act on the application and issue the permit.

Enclosed with this letter is a copy of the Executive Director's Response to Comments. A copy of the complete application, draft permit and related documents, including public comments, is available for review at the TCEQ Central office. A copy of the complete application, the draft permit, and executive director's preliminary decision are available for viewing and copying at Fair Oaks Ranch City Hall, 7286 Dietz Elkhorn Road, Fair Oaks Ranch, Texas.

If you disagree with the executive director's decision, and you believe you are an "affected person" as defined below, you may request a contested case hearing. In addition, anyone may request reconsideration of the executive director's decision. A brief description of the procedures for these two requests follows.

How To Request a Contested Case Hearing.

It is important that your request include all the information that supports your right to a contested case hearing. You must demonstrate that you meet the applicable legal requirements to have your hearing request granted. The commission's consideration of your request will be based on the information you provide.

The request must include the following:

- (1) Your name, address, daytime telephone number, and, if possible, a fax number.
- (2) If the request is made by a group or association, the request must identify:
 - (A) one person by name, address, daytime telephone number, and, if possible, the fax number, of the person who will be responsible for receiving all communications and documents for the group; and
 - (B) one or more members of the group that would otherwise have standing to request a hearing in their own right. The interests the group seeks to protect must relate to the organization's purpose. Neither the claim asserted nor the relief requested must require the participation of the individual members in the case.
- (3) The name of the applicant, the permit number and other numbers listed above so that your request may be processed properly.
- (4) A statement clearly expressing that you are requesting a contested case hearing. For example, the following statement would be sufficient: "I request a contested case hearing."

Your request must demonstrate that you are an **"affected person."** An affected person is one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. Your request must describe how and why you would be adversely affected by the proposed facility or activity in a manner not common to the general public. For example, to the extent your request is based on these concerns, you should describe the likely impact on your health, safety, or uses of your property which may be adversely affected by the proposed facility or activities. To demonstrate that you have a personal justiciable interest, you must state, as specifically as you are able, your location and the distance between your location and the proposed facility or activities.

Your request must raise disputed issues of fact that are relevant and material to the commission's decision on this application. The request must be based on issues that were raised during the comment period. The request cannot be based solely on issues raised in comments that have been withdrawn. The enclosed Response to Comments will allow you to determine the issues that were raised during the comment period and whether all comments raising an issue have been withdrawn. The public comments filed for this application are available for review and copying at the Chief Clerk's office at the address below.

To facilitate the commission's determination of the number and scope of issues to be referred to hearing, you should: 1) specify any of the executive director's responses to comments that you dispute; and 2) the factual basis of the dispute. In addition, you should list, to the extent possible, any disputed issues of law or policy.

How To Request Reconsideration of the Executive Director's Decision.

Unlike a request for a contested case hearing, anyone may request reconsideration of the executive director's decision. A request for reconsideration should contain your name, address, daytime phone number, and, if possible, your fax number. The request must state that you are requesting reconsideration of the executive director's decision, and must explain why you believe the decision should be reconsidered.

Deadline for Submitting Requests.

A request for a contested case hearing or reconsideration of the executive director's decision must be **received** by the Chief Clerk's office no later than **30 calendar days** after the date of this letter. You may submit your request electronically at <http://www.tceq.state.tx.us/about/comments.html> or by mail to the following address:

LaDonna Castañuela, Chief Clerk
TCEQ, MC-105
P.O. Box 13087
Austin, Texas 78711-3087

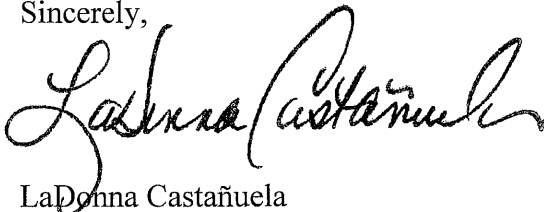
Processing of Requests.

Timely requests for a contested case hearing or for reconsideration of the executive director's decision will be referred to the alternative dispute resolution director and set on the agenda of one of the commission's regularly scheduled meetings. Additional instructions explaining these procedures will be sent to the attached mailing list when this meeting has been scheduled.

How to Obtain Additional Information.

If you have any questions or need additional information about the procedures described in this letter, please call the Office of Public Assistance, Toll Free, at 1-800-687-4040.

Sincerely,

A handwritten signature in black ink, appearing to read 'LaDonna Castañuela', written in a cursive style.

LaDonna Castañuela
Chief Clerk

LDC/lg

Enclosures

MAILING LIST
for
City of Fair Oaks Ranch
TPDES Permit No. WQ00011867001

FOR THE APPLICANT:

Dan Kasprowicz
City of Fair Oaks Ranch
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Fair Oaks Ranch, Texas 78015-4707

Paul A. Schroeder, P.E., R.P.L.S.
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& Surveying, Inc.
140 Heimer Road, Suite 617
San Antonio, Texas 78232-5032

PROTESTANTS/INTERESTED PERSONS:

Jody Daniel
29743 No Le Haze Drive
Fair Oaks Ranch, Texas 78015-4562

Franz & Gisela Hallermann
30410 Fairway Run
Fair Oaks Ranch, Texas 78015-4448

FOR THE EXECUTIVE DIRECTOR
via electronic mail:

Chrissie Angeletti, Staff Attorney
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Environmental Law Division MC-173
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Austin, Texas 78711-3087

Brian Sierant, Technical Staff
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Water Quality Division MC-148
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FOR OFFICE OF PUBLIC ASSISTANCE
via electronic mail:

Bridget Bohac, Director
Texas Commission on Environmental Quality
Office of Public Assistance MC-108
P.O. Box 13087
Austin, Texas 78711-3087

FOR PUBLIC INTEREST COUNSEL
via electronic mail:

Blas J. Coy, Jr., Attorney
Texas Commission on Environmental Quality
Public Interest Counsel MC-103
P.O. Box 13087
Austin, Texas 78711-3087

FOR THE CHIEF CLERK
via electronic mail:

LaDonna Castañuela
Texas Commission on Environmental Quality
Office of Chief Clerk MC-105
P.O. Box 13087
Austin, Texas 78711-3087

TCEQ PERMIT NO. WQ0011867001

APPLICATION BY

CITY OF FAIR OAKS RANCH

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BEFORE THE

TEXAS COMMISSION

ENVIRONMENTAL QUALITY

2010 APR 15 AM 11:30
CHIEF CLERK'S OFFICE

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT

The Executive Director (ED) of the Texas Commission on Environmental Quality (the Commission or TCEQ) files this Response to Public Comment (Response) on the application by the City of Fair Oaks Ranch (Applicant) for a renewal of Permit No. WQ0011867001, and on the Executive Director's preliminary decision on the application. This permit will not authorize a discharge of pollutants into water in the State. As required by 30 Texas Administrative Code (TAC) Section 55.156, before a permit is issued, the Executive Director prepares a response to all timely, relevant and material, or significant comments. The Office of Chief Clerk timely received comment letters from Mr. Jody Daniel. This response addresses all such timely public comments received, whether or not withdrawn. If you need more information about this permit application or the wastewater permitting process, please call the TCEQ Office of Public Assistance at 1-800-687-4040. General information about the TCEQ can be found at our website at www.tceq.state.tx.us.

BACKGROUND

Description of Facility

The City of Fair Oaks Ranch has applied to the TCEQ for a renewal of TCEQ Permit No. WQ0011867001. The permit would authorize the disposal of treated domestic wastewater at a daily average flow not to exceed 500,000 gallons per day via surface irrigation of 280 acres of Fair Oaks Ranch Golf and Country Club land. The wastewater treatment facility and disposal site are located on the northern border of Bexar County, west of Ralph Fair Road and south of Cibolo Creek at the extreme east side of Fair Oaks Ranch in Bexar County, Texas 78015. The wastewater treatment facility and disposal site are located in the drainage basin of Upper Cibolo Creek in Segment No. 1908 of the San Antonio River Basin. The draft permit does not authorize any discharge of pollutants into water in the State.

The Fair Oaks Ranch wastewater treatment facilities consist of an activated sludge process plant using the extended aeration mode. Treatment units include a lift station, bar screen, oxidation

ditch, final clarifier, digester, sludge drying beds, chlorine contact chamber, effluent lift station and effluent holding ponds.

The effluent limitations in the draft permit, based on a daily average, are 20 mg/l BOD₅ and 20 mg/l TSS. The effluent shall contain a chlorine residual of at least 1.0 mg/l after a detention time of at least 20 minutes based on peak flow.

The draft permit includes Sludge Provisions according to the requirements of 30 TAC Chapter 312, Sludge Use, Disposal and Transportation. Sludge generated from the treatment facility is hauled by a registered transporter and disposed of at a TCEQ permitted landfill, Tessman Road Landfill, Permit No. 1410C, in Bexar County. The draft permit authorizes the disposal of sludge at a TCEQ authorized land application site or co-disposal landfill.

Procedural Background

The TCEQ received the application for permit renewal from the City of Fair Oaks Ranch on August 10, 2009 and declared it administratively complete on September 11, 2009. The Applicant published the Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) in the *Borne Star* on September 29, 2009. The Applicant published the Notice of Application and Preliminary Decision (NAPD) in the *Borne Star* on January 8, 2010. The public comment period ended on February 8, 2010. This application was administratively complete after September 1, 1999; therefore, this application is subject to the procedural requirements adopted pursuant to House Bill 801, 76th Legislature, 1999 (76th Legislature, 1999).

COMMENTS AND RESPONSES

COMMENT 1:

Mr. Daniel has expressed concern that he and his family have experienced significant nuisance odors and vector issues (flies) and due to these conditions, they are prevented from the reasonable use and enjoyment of their yard and the areas outside their home. He also states that after complaining to the TCEQ these issues still exist.

RESPONSE 1:

TCEQ rules require domestic wastewater treatment facilities to meet buffer zone requirements for the abatement and control of nuisance odor according to 30 TAC Section 309.13(e). However, 30 TAC § 309.13(f) states that facilities whose original permit application was made prior to October 8, 1990 are not required to comply with the buffer zone requirement.

The following Special Provisions in the draft permit regarding irrigation practices and management are intended to minimize nuisance odor and protect human health and the environment:

3. The permittee shall maintain and operate the treatment facility in order to achieve optimum efficiency of treatment capability. This shall include required monitoring of effluent flow and quality as well as appropriate grounds and building maintenance.
4. Irrigation practices shall be designed and managed so as to prevent ponding of effluent or contamination of ground and surface waters and to prevent the occurrence of nuisance conditions in the area. Tailwater control facilities shall be provided as necessary to prevent the discharge of any wastewater from the irrigated land.
5. Wastewater shall not be applied for irrigation during rainfall events or when the ground is frozen or saturated.
6. The irrigated crops include golf course bermuda grass. Application rates to the 280 acres of irrigated land . . . shall not exceed 2.0 acre-feet per year per acre irrigated. The permittee is responsible for providing equipment to determine application rates and maintaining accurate records of the volume of effluent applied. These records shall be made available for review by the Texas Commission on Environmental Quality and shall be maintained for at least three years.
7. Holding ponds shall conform to the Texas Commission on Environmental Quality "Design Criteria for Sewerage Systems" requirements for stabilization ponds with regard to construction and levee design, and a minimum of 2 feet of freeboard shall be maintained.
8. The permittee shall obtain representative soil samples from the root zones of the disposal site and analyze the samples as outlined in the following paragraph.

An annual analysis of a representative soil sample taken from the root zone of the irrigated site shall be made. Each soil boring shall be separated into three samples according to the following depth zones: 0 to 6 inches, 6 to 18 inches and 18 to 30 inches below the ground surface. Each zone shall be thoroughly mixed prior to being analyzed. Sampling procedures shall employ accepted techniques of soil science for obtaining representative analytical results. Analysis shall be performed for pH, total nitrogen, potassium, phosphorus and conductivity.

The permittee shall submit the results of the soil sample analyses to the TCEQ Regional Office (MC Region 13) and Water Quality Compliance Monitoring Team (MC 224) of the Enforcement Division during September of each year.

10. If the effluent is to be transferred to a holding pond or tank, re-chlorination prior to the effluent being delivered into the irrigation system will be required. A trace chlorine residual shall be maintained in the effluent at the point of irrigation application.
11. The permittee shall erect adequate signs stating that the irrigation water is from a non-potable water supply for any area where treated effluent is stored or where there exist hose bibs or faucets. Signs shall consist of a red slash superimposed over the international symbol for drinking water accompanied by the message "DO NOT DRINK THE WATER" in both English and Spanish. All piping transporting the effluent shall be clearly marked with these same signs.
12. Spray fixtures for the irrigation system shall be of such design that they cannot be operated by unauthorized personnel.
13. Irrigation with effluent shall be accomplished only when the area specified is not in use.
14. Permanent transmission lines shall be installed from the holding pond to each tract of land to be irrigated utilizing effluent from that pond.
15. Facilities for the retention of treated or untreated wastewater shall be adequately lined to control seepage. . . ."

If this facility is operated and maintained as permitted and in accordance with TCEQ rules, nuisance odor and vector incidents would be minimized.

Permit Condition No. 7 in the draft permit states that a "permit does not convey any property rights of any sort, or any exclusive privilege." The permit does not authorize any invasion of personal rights or any violation of federal, state, or local laws or regulations. It is the Applicant's responsibility to acquire the necessary property rights to carryout the permitted activity. The draft permit does not limit the ability of nearby landowners to use common law remedies for trespass, nuisance, or other causes of action in response to activities that may or actually do result in injury or adverse effects on human health or welfare, animal life, vegetation, or property, or that may or actually do interfere with the normal use and enjoyment of animal life, vegetation, or property.

Individuals are encouraged to report any concerns about nuisance odor issues or suspected noncompliance with this permit or other environmental regulation by contacting the TCEQ Regional Office at 210-460-3096, or by calling the 24-hour toll-free Environmental Complaints Hotline at 1-888-777-3186. You may also file citizen complaints on-line at <http://www.tceq.state.tx.us/compliance/complaints/index.html>. If the facility is found to be out

of compliance with the terms and conditions of the permit, it will be subject to possible enforcement action. Citizen-collected evidence may be used in such an action. See 30 TAC § 70.4, Enforcement Action Using Information Provided by Private Individual, for details on gathering and reporting such evidence. The TCEQ has long had procedures in place for accepting environmental complaints from the general public but now has a new tool for bringing potential environmental problems to light. Under the citizen-collected evidence program, individuals can provide information on possible violations of environmental law and the information can be used by the TCEQ to pursue enforcement. In this program, citizens can become involved and may eventually testify at a hearing or trial concerning the violation. For additional information, see the TCEQ publication, *"Do You Want to Report an Environmental Problem? Do You Have Information or Evidence?"* This booklet is available in English and Spanish from the TCEQ Publications office at 512-239-0028, and may be downloaded from the agency website at www.tceq.state.tx.us (under Publications, search for document no. 278).

COMMENT 2:

Mr. Daniel states that the City of Fair Oaks Ranch has promised certain conditions and changes to their process to correct issues to eliminate nuisance conditions, and given the fact that their permit is being renewed, he feels that the "promised changes" should be reviewed and given the level of scrutiny that is provided by a contest case hearing, not simply the review of a technical review. He believes that, due to the magnitude of proposed changes, this is not a simple no change renewal and it is imperative that the wastewater treatment plant bring their technology and operating practices up to levels that prevent emission of noxious odors and health issues associated with ever present flies rather than the current 30 plus year old technology that the City of Fair Oaks Ranch is trying to operate with.

RESPONSE 2:

To ensure that the proposed wastewater treatment plant meets water quality standards for the protection of surface water quality, groundwater, and human health according to TCEQ rules and policies, the proposed draft permit includes effluent limitations and monitoring requirements for five day Biochemical Oxygen Demand (BOD₅), Total Suspended Solids (TSS), chlorine residual, and pH. The proposed draft permit also includes an additional requirement for the disposal of domestic sludge generated from the wastewater treatment facility in accordance with TCEQ rules. In drafting the proposed draft permit, the Executive Director has determined that the conditions contained therein are protective of the environment, water quality, and human health and that it meets TCEQ rules and requirements. The Executive Director is not aware of any "promised changes" made to the commenter or anyone else by the permittee, as such the Executive Director lacks requisite information to address this issue. Please see response no. 1 above on how to report complaints about the facility. Noncompliance with the permit will result in enforcement action against the permittee.

Finally, "[f]acilities for which plans and specifications have been approved prior to March 1, 1990, are not required to resubmit revised plans and specifications to meet changed requirements in [Section 309.13] in obtaining renewal of an existing permit." See 30 TAC § 309.13(h). This

facility has been in existence since 1977. The permittee has not proposed any changes to the permit since 1977 that would trigger a major amendment under 30 TAC § 305.62(c)(1).

COMMENT 3:

Mr. Daniel has requested a public meeting for the proposed permit renewal for City of Fair Oaks Ranch to allow for citizen involvement.

RESPONSE 3:

To determine if a public meeting should be held, the Executive Director considers the factors set out in Title 30 of the Texas Administrative Code, Section 55.154. This rule requires that a public meeting be held if: (1) the Executive Director determines that there is a substantial or significant degree of public interest in an application; (2) a member of the legislature who represents the general area in which the facility is located or proposed to be located requests that a public meeting be held; or (3) when a public meeting is otherwise required by law. Based on these factors, the Executive Director has determined not to hold a public meeting in this case.

CHANGES MADE TO THE DRAFT PERMIT IN RESPONSE TO COMMENT

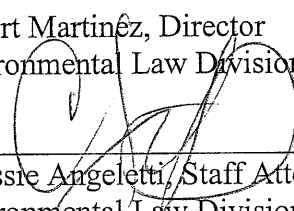
No changes to the draft permit have been made in response to public comment.

Respectfully submitted,

Texas Commission on Environmental Quality

Mark R. Vickery, P.G.
Executive Director

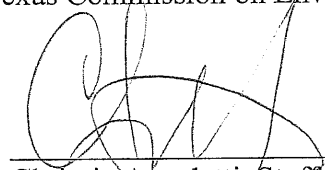
Robert Martínez, Director
Environmental Law Division

By 
Chrissie Angeletti, Staff Attorney
Environmental Law Division
State Bar No. 24059383
P.O. Box 13087, MC 173
Austin, Texas 78711-3087
(512) 239-1204

REPRESENTING THE
EXECUTIVE DIRECTOR OF THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

CERTIFICATE OF SERVICE

I certify that on April 15, 2010, the "Executive Director's Response to Public Comment" for Permit No. WQ0011867001 was filed with the Texas Commission on Environmental Quality's Office of the Chief Clerk.



Chrissie Angeletti, Staff Attorney
Environmental Law Division

REPRESENTING THE
EXECUTIVE DIRECTOR OF THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

2010 APR 15 AM 11:30
CHIEF CLERKS OFFICE

TEXAS
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